

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-030-13-1-4-20399-15  
45-030-14-1-4-01113-16  
**Petitioner:** Wintering, LLC  
**Respondent:** Lake County Assessor  
**Parcel:** 45-12-29-401-002.000-030  
**Assessment Years:** 2013 & 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated the 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on May 1, 2014, and the 2014 appeal on May 14, 2015. The PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
2. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on January 30, 2017. Neither the ALJ nor the Board inspected the property.
4. David Braatz, manager of Wintering, LLC, was sworn as a witness for Petitioner. Joseph James, Lake County Hearing Officer; Kathleen McMullin, Ross Township Assessor’s Office Supervisor; and Nicole Ooms, Ross Township Deputy Assessor, were sworn as witnesses for Respondent.

**Facts**

5. The subject property is a vacant 17.998 acre parcel located at 9005 Taft Street in Merrillville.<sup>1</sup>
6. For 2013, the property was assessed at \$345,800. For 2014, the property was assessed at \$350,600.<sup>2</sup>

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<sup>1</sup> The only portion of the land at issue is a 1.8 acre section assessed as undeveloped/usable commercial land.

<sup>2</sup> The assessed value of the 1.8 acre section at issue was \$317,000 for both 2013 and 2014.

7. Petitioner contends that the 1.8 acres at issue should be assessed at the agricultural rate for both years.

### **Record**

8. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1:	Property record card (“PRC”),
Petitioner Exhibit 2:	GIS photograph of the subject parcel,
Petitioner Exhibit 3:	United States Department of Agriculture (“USDA”) Farm Summary for 2010,
Petitioner Exhibit 4:	USDA Farm Summary for 2011,
Petitioner Exhibit 5:	USDA Farm Summary for 2012,
Petitioner Exhibit 6:	USDA Farm Summary for 2013,
Petitioner Exhibit 7:	USDA Farm Summary for 2014,
Petitioner Exhibit 8:	2011 Property Tax Guidelines, page 81,
Petitioner Exhibit 9:	Department of Local Government Finance (“DLGF”) memorandum, February 12, 2008,
Petitioner Exhibit 10:	DLGF presentation on land valuation, January 2011,
Petitioner Exhibit 11:	<i>Shelburne v. Kosciusko Co.</i> , Petition No. 43-031-09-1-5-00026 (Ind. Bd. Tax Rev. June 5, 2012).
Petitioner Exhibit 12:	Right of Way Contract recorded January 9, 1965,
Petitioner Exhibit 13:	Right of Way Contract recorded September 23, 1999,
Petitioner Exhibit 14:	DVG, Inc. letter dated May 5, 2016,
Petitioner Exhibit 15:	Photograph of the subject property,
Petitioner Exhibit 16:	Photograph of the subject property during pipeline Repair,
Petitioner Exhibit 17:	Photograph of the subject property during pipeline Repair,
Petitioner Exhibit 18:	Appraisal letter,
Petitioner Exhibit 19:	PRC for 5840 Broadway,
Respondent Exhibit 1:	USDA Farm Report,
Respondent Exhibit 2:	Spreadsheet of comparable sales,
Respondent Exhibit 3:	Spreadsheet of comparable sales,
Respondent Exhibit 4:	Map of underground pipeline 1,
Respondent Exhibit 5:	Map of underground pipeline 2,
Respondent Exhibit 6:	Map of underground pipeline 3,

Respondent Exhibit 7: Map of underground pipeline 4,  
Respondent Exhibit 8: Map of underground pipeline 5,  
Respondent Exhibit 9: Map of underground pipeline 6,  
Respondent Exhibit 10: Aerial map of the subject property,

Board Exhibit A: Form 131 petitions with attachments,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

### **Burden of Proof**

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value decreased from 2012 to 2013. Petitioner, therefore, has the burden of proof for 2013. The burden with regard to the 2014 value depends on the resolution of the 2013 matter and will be addressed in turn.

## Summary of the Parties' Contentions

14. Petitioner's case:

- a. Petitioner contends that the assessed values are overstated based on the classification of a portion of the subject parcel as undeveloped/unusable commercial land rather than as agricultural land. Petitioner contends that the subject property consists of 17.998 acres. Petitioner contends that the majority of the parcel, specifically 16.198 acres, is being properly assessed as agricultural, while the remaining 1.8 acres is being improperly assessed as undeveloped/usable. Petitioner contends that the entire parcel, including the 1.8 acres at issue, should be assessed as agricultural. *Braatz testimony; Pet'r Ex. 1.*
- b. Petitioner argues that, while the zoning of the land may have changed at some point, the property has been used for agricultural purposes for at least 35 years. It further contends that there has never been any commercial development or building on the property at issue. *Braatz testimony.*
- c. Petitioners cited a DLGF memorandum dated February 12, 2008. Petitioner contends that the memo states that all acres enrolled in programs of the USDA, Farm Services Agency, and Natural Resources Conservation Service, and that have received a "farm number," are eligible for an agricultural classification, and have been determined by those administering federal programs to be a part of an "agricultural operation." *Braatz testimony; Pet'r Ex. 9*
- d. According to Petitioner, the entire parcel, along with an adjoining 21.786 acre parcel, has a USDA farm number and has for several years. Specifically, that USDA farm number is #1398. To illustrate this significance, Petitioner points to the Board's decision in *Shelburne v. Kosciusko Co.*, Petition No. 43-031-09-1-5-00026 (June 5, 2012) where the Board placed particular weight on the fact that the property in that case had been issued a farm number. *Braatz testimony; Pet'r Ex. 3-7.*
- e. Petitioner also contends there is a permanent, 75 foot pipeline easement on the subject property. It contends that federal pipeline regulations and local pipeline permitting conditions prohibit the placement of a building or other structure over the easement. The property within the easement is required to remain open so pipeline technicians can service and repair the pipeline as needed. Petitioner contends that these conditions negatively affect the value of the property and would hinder commercial use. *Braatz testimony; Pet'r Exs. 12-17.*
- f. Petitioner further contends that the 1.8 acre portion at issue is not being farmed because the soil in that area is excessively wet and extraordinarily soft. Petitioner

contends that equipment necessary to actively farm the area would undoubtedly become mired in the soil, rendering any attempted farming activity in the area impractical. *Braatz testimony; Pet'r Exs. 2-7.*

- g. Petitioner finally contends that the 1.8 acre portion of the subject property is over-assessed based on a report prepared by Sharon Speichert, an Indiana certified residential appraiser.<sup>3</sup> Ms. Speichert noted that the wet soil and the existence of the pipeline would drastically limit any commercial use of the property. Consequently, she estimated the value of the 1.8 acres at approximately at \$6,000 per acre, or \$10,800 in total for each year. *Braatz testimony; Pet'r Ex. 18.*

15. Respondent's case:

- a. Respondent contends the 1.8 acre portion of the property at issue is not being farmed. He contends that the portion of the property at issue is zoned as commercial and is properly being assessed as undeveloped/usable commercial as opposed to agricultural. *McMullin testimony.*
- b. Respondent's witness, Ms. Ooms, presented various sales of vacant land in Merrillville. According to Ms. Ooms, while the presence of certain infrastructure, utilities, and routes of ingress and egress could affect the value of such properties, she made no adjustments to her purportedly comparable sales for any such similarities or differences with regard to the subject property. *Ooms testimony; Resp't Exs. 2 & 3.*
- c. Respondent concedes the entire property was enrolled in a USDA farm program for 2013 and 2014, among other years. Both Ms. McMullin and Ms. Ooms further concede that they have not seen any commercial development taking place on the subject property. *McMullin testimony; Ooms testimony.*

#### ANALYSIS

16. Petitioner made a prima facie case for a change in assessment. The Board reached that decision for the following reasons:
- a. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors such as soil productivity that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. See 2011 GUIDELINES, Ch. 2 at 77-78; see also Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue,

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<sup>3</sup> Although Ms. Speichert is a licensed appraiser, she did not present a USPAP compliant appraisal.

assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.

- b. Ind. Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, Glossary at 1.

### **2013 Assessment**

17. As discussed in its memorandum dated February 12, 2008, the DLGF has directed assessors that all acres enrolled in programs of the USDA, Farm Service Agency, and Natural Resources Conservation Service and have received a “farm number” are eligible for classification as “agricultural.” Those acres have been determined by those administering federal programs to be a part of an “agricultural operation.”
18. Petitioner offered evidence showing the property was used for agricultural purposes as well as evidence that all 17.998 acres have been associated with USDA Farm #1398 for several years. Specifically, Petitioner provided documentation and testimony that the subject property has been used alternatively for the farming of soybeans and corn for several years. Such evidence indicates that an agricultural classification is warranted.
19. Even had there been no evidence that the subject property had recently been farmed for soybeans or corn, land purchased and used for agricultural purposes includes cropland or pasture land (i.e., tillable land) as well as woodlands. 2011 GUIDELINES, CH. 2 AT 80. Additional categories of agricultural property include Type 4 “idle cropland” and Type 5 nontillable land “covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production.” *Id.* at 103, 104. Thus, by definition, agricultural property may include property that is not suitable for farming.
20. In fact, the Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is actively farmed. The classification depends on whether the property is put to agricultural or commercial use. The record indicates there are no improvements, such as a dwelling or other structure that might indicate a commercial use. This conclusion, absent other evidence, would compel any reasonable person to believe the property had not been used for commercial purposes in the preceding years.
21. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach Petitioner’s case, a respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass’r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

22. Respondent argues the 1.8 acres is not farmed and because it is zoned commercial it must be assessed as commercial. As stated above, there is no support indicating that a parcel must be actively farmed in order to be classified as agricultural. Furthermore, both Ms. McMullin and Ms. Ooms conceded that the entire parcel was enrolled in a USDA program and had received a farm number. They also both testified that there was no commercial development on the property for the years in question.
23. Respondent failed to rebut Petitioner's prima facie case that the property should be classified as agricultural. Therefore, the Board instructs Respondent to assess the entire parcel as agricultural land for 2013 at the appropriate rate.

**2014 Assessment**

24. Because Petitioner appealed the 2013 assessment and prevailed, and because the 2014 assessment increased, Respondent had the burden of proving that the 2014 value was correct under Ind. Code § 6-1.1-15-17.2(d).
25. The parties offered the same evidence for 2014 that they offered for 2013 and the result is the same. Consequently, the 1.8 acres currently classified as commercial undeveloped/unusable must be reclassified as agricultural and assessed accordingly.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the entire subject property should be assessed as agricultural land for 2013 and 2014.

ISSUED: June 13, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.